

March 5, 2012

The Honorable John Roberts
Chief Justice

The Honorable Stephen Breyer
Associate Justice

The Honorable Antonin Scalia
Associate Justice

The Honorable Samuel Alito
Associate Justice

The Honorable Anthony Kennedy
Associate Justice

The Honorable Sonia Sotomayor
Associate Justice

The Honorable Clarence Thomas
Associate Justice

The Honorable Elena Kagan
Associate Justice

The Honorable Ruth Bader Ginsburg
Associate Justice

Dear Chief Justice Roberts and Associate Justices of the Supreme Court,

We write to encourage the Supreme Court to initiate the process of formally adopting the Code of Conduct for U.S. Judges, and to implement a mechanism for reviewing a Justice's decision whether or not to recuse from a case. We believe Justices on our nation's highest court should set the standard for judicial ethics by agreeing to adhere to the same ethical rules as other federal judges. Implementing these reforms will promote public confidence that the Court does all it can to insure its independence and impartiality. This request follows a letter of February 24, 2011, sent by over 100 law professors to Congress calling for the same reforms. These reforms can and should be adopted by the Court of its own volition, just as the Court adopted the Judicial Conference limits on gifts and outside income through an internal resolution in 1991. We write now to urge the Court to do so.

The Code of Conduct was created to preserve "the integrity and independence of the judiciary" in recognition of the fact that "[a]n independent and honorable judiciary is indispensable to justice in our society."ⁱ The Code sets forth both aspirational rules intended to create broad ethical guidelines as well as specific prohibitions on activities that may impinge upon the integrity of the federal judiciary, such as engaging in fundraising or political activity. The Code applies to all federal judges except Supreme Court Justices. While the recent 2011 Year-End Report on the Federal Judiciary states that Supreme Court Justices "consult" the Code as a source of guidance, the Report acknowledges that the Court has thus far not adopted the Code as "its definitive source of ethical guidance."ⁱⁱⁱ Moreover, in the absence of a formal and public Court-wide policy, it is impossible to know the extent to which individual justices consult the Code or consider themselves subject to its constraints.

As this Court noted when dealing with ethical issues arising from state courts, ethical rules "serve to maintain the integrity of the judiciary and the rule of law."ⁱⁱⁱ In the wake of high-profile ethical controversies currently in the news about the Court, the Court should take action to formally and explicitly embrace the Code of Conduct as a means of ensuring the consistent application of ethical standards among all Justices and to assure the public that the Court is

unequivocally committed to maintaining the highest ethical standards.

Similarly, the Court should adopt a transparent and reviewable process for handling recusal motions. While recusal decisions of lower court judges can always be appealed to a higher authority, Supreme Court tradition allows each Justice to have the final say on his or her right to sit on a case. There is not even a requirement that recusal decisions be explained in written opinions. Because the standard contained in 28 U.S.C. § 455 is whether a judge's impartiality may reasonably be questioned, a standard which necessarily depends on the views of others, the individual facing concerns about bias is often not in the ideal position to assess independently his or her perceived impartiality. Indeed, the Supreme Court itself has acknowledged the need for an independent inquiry in situations where "the sole trier of fact is the one accused of bias."^{iv}

When recusal motions are left solely in the hands of the very Justice whose impartiality is questioned, public confidence in the Court's integrity and independence suffer. The Court should adopt a system to ensure that an individual Justice's decision whether to sit on a case is reviewable. It should also require written decisions explaining denials of recusal motions to assure the public that the Court's decisions are free of outside influence and are based on law and fact alone.

We all share a commitment to the principle of "Equal Justice Under Law," which is carved over the Court's entry, as well as to the Supreme Court itself. Adopting the Code of Conduct and ensuring formal and transparent procedures for deciding recusal motions will help protect the public's confidence in the integrity of our nation's judiciary.

Sincerely,

Mark N. Aaronson

Professor of Law
University of California,
Hastings College of the Law

Richard L. Abel

Michael J. Connell
Distinguished Professor of
Law Emeritus
University of California, Los
Angeles School of Law

Nancy S. Abramowitz

Professor of Practice
American University
Washington College of Law

Adjoa A. Aiyetoro

Associate Professor of Law
and Director, UALR Institute
on Race and Ethnicity
University of Arkansas at
Little Rock William H.
Bowen School of Law

Robin C. Alexander

Associate Professor of Law
University of the District of
Columbia David A. Clarke
School of Law

James J. Alfini

Professor of Law and Dean
Emeritus
South Texas College of Law

Michael P. Ambrosio

Professor of Law
Seton Hall University School
of Law

Camille S. Andrews

Associate Dean
Rutgers University School of
Law-Camden

Robert H. Aronson

Betts, Patterson & Mines
Emeritus Professor of Law
University of Washington
School of Law

Marie Ashe

Professor of Law
Suffolk University Law
School

Frank Askin

Distinguished Professor of
Law, Robert E. Knowlton
Scholar, and Director of the
Constitutional Litigation
Clinic
Rutgers University School of
Law-Newark

David Barnhizer

Professor of Law Emeritus
Cleveland State University,
Cleveland-Marshall College
of Law

Debra Lyn Bassett

Justice Marshall F. McComb
Professor of Law
Southwestern Law School

Anthony L. Bastone II

Assistant Dean, Career
Services
Roger Williams University
School of Law

Joseph P. Bauer

Professor of Law
Notre Dame Law School

Ron Beal

Professor of Law
Baylor University School of
Law

James R. Beattie

Professor of Law
Capital University Law
School

Susan J. Becker

Professor of Law
Cleveland State University,
Cleveland-Marshall College
of Law

John S. Beckerman

Visiting Professor
Rutgers University School of
Law-Camden

Paul Bender

Professor of Law
Arizona State University
College of Law

Michele Benedetto Neitz

Professor of Law
Golden Gate University
School of Law

Phyllis E. Bernard

Professor of Law
Oklahoma City University
School of Law

Grace Blumberg

Distinguished Professor
Emerita
University of California, Los
Angeles School of Law

Michael C. Blumm

Jeffrey Bain Faculty Scholar
& Professor of Law
Lewis and Clark Law School

Charles S. Bobis

Professor of Law
St. John's University School
of Law

Anthony J. Bocchino

Professor of Law
Temple University Beasley
School of Law

Carl T. Bogus

Professor of Law
Roger Williams University
School of Law

Charles R. Both

Adjunct Professor of Law
American University
Washington College of Law

Richard F. Breen

Professor of Law and
Director of the J. W. Long
Law Library
Willamette University
College of Law

Mark S. Brodin

Professor of Law
Boston College Law School

Ronald Benton Brown

Professor of Law
Nova Southeastern
University Shepard Broad
Law Center

Kim S. Buchanan

Associate Professor of Law
University of Southern
California Gould School of
Law

Sande L. Buhai

Clinical Professor
Loyola Law School

Alice Gresham Bullock

Professor of Law
Howard University School of
Law

William L. Burke

Professor of Law
University of South Carolina

Robert Calhoun

Professor of Law
Golden Gate University
School of Law

Paul D. Carrington

Professor of Law
Duke University School of
Law

Douglass Cassel

Professor of Law
Notre Dame Law School

FrancisCatania

Associate Professor of Law
Widener University School
of Law

Tse-shyang Chen

Professor of Law Emeritus
Quinnipiac University School
of Law

Gerald J. Clark

Professor of Law
Suffolk University School of
Law

Mary Clark

Associate Professor of Law
American University
Washington College of Law

Sherman L. Cohn

Professor of Law
Georgetown University Law
Center

Robert H. Cole

Professor of Law Emeritus
University of California,
Berkeley School of Law

Robert J. Condlin

Professor of Law
University of Maryland
Francis King Carey School of
Law

George W. Conk

Adjunct Professor & Senior
Fellow, Stein Center for Law
& Ethics
Fordham University School
of Law

Diane E. Courselle

Winston S. Howard
Distinguished Professor of
Law
University of Wyoming
College of Law

Roger Cramton

Stevens Emeritus Professor
of Law
Cornell Law School

Scott L. Cummings

Professor of Law
University of California, Los
Angeles School of Law

Dennis Curtis

Clinical Professor Emeritus
of Law and Professorial
Lecturer in Law
Yale Law School

Frank E. Deale

Professor of Law
City University of New York
School of Law

Robert Dinerstein

Professor of Law
American University
Washington College of Law

Victoria J. Dodd

Professor of Law
Suffolk University Law
School

Curtis F.J. Doebbler

Professor of Law
Webster University

Lawrence A. Dubin

Professor of Law
University of Detroit Mercy
School of Law

Edward J. Eberle

Professor of Law
Roger Williams University
School of Law

Pamela Edwards

Professor of Law and
Director of the Center for
Diversity in the Legal
Profession
City University of New York
School of Law

James R. Elkins

Professor of Law
West Virginia University
College of Law

Russell Engler

Professor of Law & Director
of Clinical Programs
New England School of Law

Jules Epstein

Associate Professor of Law
Widener University School
of Law

Peter Erlinder

Professor of Law
William Mitchell College of
Law

Christopher M. Fairman

Alumni Society Designated
Professor of Law
The Ohio State University
Moritz College of Law

Katherine H. Federle

Professor of Law & Director,
Center for Interdisciplinary
Law and Policy Studies
The Ohio State University
Moritz College of Law

Todd D. Fernow

Professor of Law and
Director of the Criminal Law
Clinic
University of Connecticut
School of Law

Eric M. Fink

Associate Professor of Law
Elon University School of
Law

Martin S. Flaherty

Visiting Professor
Princeton University

William H. Fortune

Professor of Law
University of Kentucky

Maurice R. Franks

Professor of Law
Southern University Law
Center

Ann E. Freedman

Associate Professor of Law
Rutgers University School of
Law - Camden

Michael S. Frisch

Ethics Counsel
Georgetown University Law
Center

Amanda Frost

Professor of Law
American University
Washington College of Law

Theresa A. Gabaldon

Lyle T. Alverson Professor of Law
The George Washington University Law School

William T. Gallagher

Associate Professor of Law
Golden Gate University School of Law

John L. Gedid

Professor of Law
Widener University School of Law

William S. Geimer

Professor of Law Emeritus
Washington and Lee University School of Law

Lauren Gilbert

Professor of Law
St. Thomas University School of Law

Daniel A. Gioia

Adjunct Professor of Law
Valparaiso University School of Law

Stephen B. Goldberg

Professor of Law Emeritus
Northwestern University School of Law

Phyllis Goldfarb

Jacob Burns Foundation Professor of Clinical Law
George Washington University School of Law

Carmen G. Gonzalez

Professor of Law
Seattle University School of Law

Michele Goodwin

Everett Fraser Professor of Law
University of Minnesota Law School

Robert W. Gordon

Professor of Law
Stanford Law School

Robert A. Gorman

Gemmill Professor Emeritus of Law
University of Pennsylvania Law School

David Gottlieb

Professor of Law
University of Kansas School of Law

Stuart P. Green

Professor of Law
Rutgers University School of Law - Newark

David A. Green

Professor of Law
North Carolina Central University School of Law

Leonard Gross

Professor of Law Emeritus
Southern Illinois University School of Law

Martin Guggenheim

Fiorello LaGuardia Professor of Clinical Law
New York University School of Law

Jonathan M. Gutoff

Professor of Law
Roger Williams University School of Law

Melissa Hart

Assistant Professor and Director, The Byron White Center for the Study of American Constitutional Law
University of Colorado Law School

Henry L. Hecht

Lecturer in Residence
University of California, Berkeley School of Law

L. Lynn Hogue

Professor of Law Emeritus
Georgia State University College of Law

Susan C. Hoke

Associate Professor of Law
Cleveland State University, Cleveland-Marshall College of Law

Oliver A. Houck

Professor of Law
Tulane University Law School

Joyce A. Hughes

Professor of Law
Northwestern University School of Law

Joseph R. Hurt

Visiting Professor of Law
Florida A & M University College of Law

Elizabeth M. Iglesias

Professor of Law
University of Miami School of Law

Michael T. Iglesias

Professor of Law
University of San Francisco School of Law

William S. Jordan, III

Associate Dean and Professor of Law
University of Akron School of Law

Donald K. Joseph

Visiting Associate Professor
Rutgers University School of Law – Camden

Timothy S. Jost

Robert L. Willett Family Professor
Washington and Lee University School of Law

Peter A. Joy
Henry Hitchcock Professor of Law
Washington University in St. Louis School of Law

José R. Juárez, Jr.
Professor of Law
University of Denver Sturm College of Law

Leonard V. Kaplan
Mortimer M. Jackson Professor of Law
University of Wisconsin Law School

Walter J. Kendall
Professor of Law
The John Marshall Law School

Kay P. Kindred
Denton Professor of Law
University of Nevada- Las Vegas, William S. Boyd School of Law

Kimberly Kirkland
Professor of Law
University of New Hampshire School of Law

Kenneth F. Kirwin
Professor of Law Emeritus
William Mitchell College of Law

Susan P. Koniak
Professor of Law
Boston University School of Law

Glenn S. Koppel
Professor of Law
Western State University College of Law

Lawrence S. Krieger
Clinical Professor of Law
Florida State University College of Law

Bailey H. Kuklin
Professor of Law
Brooklyn Law School

Maureen E. Laflin
Director of Clinical Programs and Professor of Law
University of Idaho College of Law

Charles R. Lawrence, III
Professor of Law
Georgetown University Law Center and University of Hawai'i at Mānoa William S. Richardson School of Law

Robert P. Lawry
Emeritus Professor of Law
Case Western Reserve University School of Law

Eumi K. Lee
Clinical Professor of Law
University of California, Hastings College of the Law

Lisa G. Lerman
Professor of Law and Coordinator of Clinical Programs
The Catholic University of America, Columbus School of Law

John Leubsdorf
Professor of Law, Judge Lacey Scholar, and Associate Dean for Faculty and Research
Rutgers University School of Law - Newark

John Levy
Chancellor Professor of Law, Emeritus
William and Mary Law School

Raven C. Lidman
Clinical Professor of Law
Seattle University School of Law

Joseph W. Little
Professor of Law Emeritus
University of Florida Fredric G. Levin College of Law

Stephen Loffredo
Professor of Law
City University of New York School of Law

Antoinette Sedillo Lopez
Professor of Law
University of New Mexico School of Law

Michael W. Loudenslager
Associate Professor, Director of Legal Process Program
Appalachian School of Law

Mary L. Lyndon
Professor of Law
St. John's University School of Law

Tayyab Mahmud
Professor of Law
Seattle University School of Law

Gary M. Maveal
Professor of Law
University of Detroit Mercy School of Law

Thomas McCLOW
Adjunct Professor
Judson University

Janis L. McDonald
Professor of Law
Syracuse University College of Law

Judith A. McMorrow
Professor of Law
Boston College Law School

Saul H. Mendlovitz
Dag Hammarskjöld Professor of Peace and World Order Studies Emeritus
Rutgers University School of Law - Newark

Carrie Menkel-Meadow
A.B. Chettle, Jr. Professor of
Law
Georgetown University Law
Center

Vanessa Merton
Professor of Law
Pace University School of
Law

Joel A. Mintz
Professor of Law
Nova Southeastern
University Shepard Broad
Law Center

James Moliterno
Vincent Bradford Professor
of Law
Washington and Lee
University School of Law

Jennifer Moore
Regents Professor of Law
University of New Mexico
School of Law

Odeana R. Neal
Associate Professor of Law
University of Baltimore
School of Law

Sheldon M. Novick
Adjunct Professor of Law
and History
Vermont Law School

Michael P. O'Connor
Professor of Law
Phoenix School of Law

James M. O'Fallon
Frank Nash Professor of
Law, Emeritus
University of Oregon School
of Law

Gregory J. O'Meara, S.J.
Associate Professor of Law
Marquette University Law
School

Christine C. Pagano
Faculty of Law
Golden Gate University
School of Law

Joseph M. Perillo
Distinguished Professor,
Emeritus
Fordham University School
of Law

Rex R. Perschbacher
Daniel J. Dykstra Chair in
Law
University of California,
Davis School of Law

Mark A. Peterson
Clinical Professor of Law
Lewis and Clark Law School

John K. Pierre
Professor of Law
Southern University Law
Center

Gregory C. Pingree
Professor of Law
Florida Coastal School of
Law

Lee A. Pizzimenti
Associate Dean and Professor
of Law
University of Toledo College
of Law

Zygmunt J.B. Plater
Professor of Law
Boston College Law School

Charles R.P. Pouncy
Associate Professor of Law
Florida International
University College of Law

Cedric Merlin Powell
Professor of Law
University of Louisville
Louis D. Brandeis School of
Law

Robert Pugsley
Professor of Law
Southwestern Law School

Mark C. Rahdert
Charles Klein Professor of
Law & Government
Temple University Beasley
School of Law

Drucilla S. Ramey
Dean of the School of Law
Golden Gate University
School of Law

Vernellia R. Randall
Professor of Law
The University of Dayton
School of Law

Maritza Reyes
Assistant Professor of Law
Florida A&M University
College of Law

Deborah L. Rhode
Ernest W. McFarland
Professor of Law
Stanford Law School

Paula R. Rhodes
Associate Professor of Law
University of Denver Sturm
College of Law

William J. Rich
Professor of Law
Washburn University School
of Law

Winston W. Riddick
Professor of Law
Southern University Law
Center

Caprice L. Roberts
Professor of Law
West Virginia University
College of Law

Michael L. Rustad
Thomas F. Lambert Jr.
Distinguished Professor
Suffolk University Law
School

Stephen A. Saltzburg
Wallace and Beverly
Woodbury University
Professor of Law
George Washington
University School of Law

Jack L. Sammons
Griffin B. Bell Professor of
Law
Mercer University Walter F.
George School of Law

George Schatzki
Emeritus Professor of Law
Arizona State University
Sandra Day O'Connor
College of Law

Herman Schwartz
Professor of Law
American University
Washington College of Law

Eric Segall
Professor of Law
Georgia State University
College of Law

Theodore P. Seto
Professor of Law
Loyola Law School

Jeffrey M. Shaman
Vincent de Paul Professor of
Law
DePaul University College of
Law

Steven H. Shiffrin
Charles Frank Reavis, Sr.,
Professor of Law
Cornell University Law
School

Marjorie M. Shultz
Professor of Law Emerita
University of California,
Berkeley School of Law

Marjorie A. Silver
Professor of Law
Touro College Jacob D.
Fuchsberg Law Center

Jay Sterling Silver
Professor of Law
St. Thomas University
School of Law

William H. Simon
Arthur Levitt Professor of
Law
Columbia Law School

Rima Sirota
Associate Professor, Legal
Research & Writing
Georgetown University Law
Center

W. David Slawson
Torrey H. Webb Professor of
Law Emeritus
University of Southern
California Gould School of
Law

Michael J. Slinger
Associate Dean and Professor
of Law
Widener University School
of Law

Abbe Smith
Professor of Law
Georgetown University Law
Center

Susan Lea Smith
Professor of Law
Willamette University

Larry R. Spain
Professor of Law
Texas Tech University
School of Law

James H. Stark
Professor of Law
University of Connecticut
School of Law

Jeff W. Stempel
Doris S. & Theodore B. Lee
Professor of Law
William S. Boyd School of
Law, University of Las
Vegas

Geoffrey R. Stone
Edward H. Levi
Distinguished Service
Professor of Law
The University of Chicago
Law School

Maura I. Strassberg
Professor of Law
Drake University Law School

Leonard P. Strickman
Professor and Founding Dean
Emeritus
Florida International
University College of Law

Jonathan K. Stubbs
Professor of Law
University of Richmond
School of Law

Joseph B. Stulberg
John W. Bricker Professor of
Law
The Ohio State University
Moritz College of Law

Paul L. Tractenberg
Board of Governors
Professor of Law
Rutgers University School of
Law - Newark

Rodney J. Uphoff
Elwood Thomas Missouri
Endowed Professor of Law
University of Missouri
School of Law

Victor M. Uribe-Uran

Associate Professor of
History and Law
Florida International
University College of Law

Stephen I. Vladeck

Professor of Law and
Associate Dean for
Scholarship
American University
Washington College of Law

Valerie J. Vollmar

Professor of Law
Willamette University
College of Law

Janet Weinstein

Professor of Law
California Western School of
Law

Alan J. Weisbard

Professor Emeritus of Law
University of Wisconsin Law
School

Carwina Weng

Clinical Professor of Law
Indiana University Maurer
School of Law

Alan M. White

Professor of Law
Valparaiso University School
of Law

Robert Westley

Professor of Law
Tulane University Law
School

Fred J. Williams

Associate Professor of Law
North Carolina Central
University School of Law

Cynthia A. Williams

Professor of Law
University of Illinois College
of Law

Lucy A. Williams

Professor of Law
Northeastern University
School of Law

Gary C. Williams

Professor of Law and Johnnie
L. Cochran, Jr. Chair in Civil
Rights
Loyola Law School

Evelyn Wilson

Horatio C. Thompson
Endowed Professor of Law
Southern University Law
Center

Peter Winship

James Cleo Thompson Sr.
Trustee Professor
Southern Methodist
University Dedman School of
Law

Charles W. Wolfram

Charles Frank Reavis Sr.
Professor Emeritus
Cornell Law School

William J. Woodward, Jr.

Professor of Law
Temple University Beasley
School of Law

Jennifer L. Wright

Associate Professor of Law
University of St. Thomas
School of Law

Ellen C. Yaroshefsky

Clinical Professor of Law and
Director, Jacob Burns Center
for Ethics in the Practice of
Law
Yeshiva University,
Benjamin N. Cardozo School
of Law

William Yeomans

Fellow in Law and
Government
American University
Washington College of Law

Richard Zitrin

Lecturer in Law
University of California,
Hastings College of the Law

* School affiliations are listed for identification purposes only, and shall not be construed as the endorsement of any institution.

ⁱ Canon 1, Code of Conduct for United States Judges (2009), *available at* <http://www.uscourts.gov/RulesAndPolicies/CodesOfConduct/CodeConductUnitedStatesJudges/CodeOfConduct.asp> x.

ⁱⁱ 2011 Year-End Report on the Federal Judiciary (Dec. 31, 2011), *available at* <http://www.supremecourt.gov/publicinfo/year-end/2011year-endreport.pdf>.

ⁱⁱⁱ *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 2266 (2009).

^{iv} *Id.* at 2263 (emphasis added).